

REFERENCE TITLE: "A" and "B" schools; audits

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

# HB 2008

Introduced by  
Representative Fillmore

## AN ACT

AMENDING SECTION 15-213, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-213.03; AMENDING SECTIONS 15-914 AND 15-914.01, ARIZONA REVISED STATUTES; RELATING TO AUDIT REQUIREMENTS FOR SCHOOL DISTRICTS AND CHARTER SCHOOLS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-213, Arizona Revised Statutes, is amended to  
3 read:

4 15-213. Procurement practices of school districts and charter  
5 schools: definitions

6 A. The state board of education shall adopt rules prescribing  
7 procurement practices for all school districts in this state as follows:

8 1. The state board shall submit to the auditor general proposed rules  
9 consistent with the procurement practices prescribed in title 41, chapter 23,  
10 modifying the provisions for public notice of invitation for bids, requests  
11 for proposals and requests for qualifications to allow a governing board to  
12 give public notice of the invitation for bids, requests for proposals and  
13 requests for qualifications by publication in the official newspaper of the  
14 county as defined in section 11-255, modifying the provisions relating to  
15 disposal of materials to comply with section 15-342, paragraph 18, providing  
16 for governing board delegation of procurement authority and modifying as  
17 necessary other provisions that the state board determines are not  
18 appropriate for school districts. The rules shall include provisions  
19 specifying that school districts are not required to engage in competitive  
20 bidding in order to make the decision to participate in programs pursuant to  
21 section 15-382 and that a program authorized by section 15-382 is not  
22 required to engage in competitive bidding for the services necessary to  
23 administer the program or for purchase of insurance or reinsurance. The  
24 rules shall include provisions specifying that school districts are not  
25 required to engage in competitive bidding in order to place a pupil in a  
26 private school that provides special education services if such placement is  
27 prescribed in the pupil's individualized education program and the private  
28 school has been approved by the department of education division of special  
29 education pursuant to section 15-765, subsection D. This placement is not  
30 subject to rules adopted by the state board of education before November 24,  
31 2009 pursuant to this section. The rules for procurement of construction  
32 projects shall include provisions specifying that surety bonds furnished as  
33 bid security and performance and payment bonds shall be executed and  
34 furnished as required by title 34, chapter 2 or 6, as applicable. The rules  
35 shall specify the total cost of a procurement that is subject to invitations  
36 for bids, requests for proposals and requests for clarification, using the  
37 aggregate dollar amount limits for procurements prescribed in section  
38 41-2535.

39 2. The state board of education shall adopt rules for procurements  
40 involving construction not exceeding one hundred fifty thousand dollars,  
41 which shall be known as the simplified school construction procurement  
42 program. At a minimum, the rules for a simplified construction procurement  
43 program shall require that:

1 (a) A list be maintained by each county school superintendent of  
2 persons who desire to receive solicitations to bid on construction projects  
3 to which additions shall be permitted throughout the year.

4 (b) The list of persons be available for public inspection.

5 (c) A performance bond and a payment bond as required by this section  
6 be provided for contracts for construction by contractors.

7 (d) All bids for construction be opened at a public opening and the  
8 bids shall remain confidential until the public opening.

9 (e) All persons desiring to submit bids be treated equitably and the  
10 information related to each project be available to all eligible persons.

11 (f) Competition for construction projects under the simplified school  
12 construction procurement program be encouraged to the maximum extent  
13 possible. At a minimum, a school district shall submit information on each  
14 project to all persons listed with the county school superintendent by any  
15 school district within that county.

16 (g) A provision, covenant, clause or understanding in, collateral to  
17 or affecting a construction contract that makes the contract subject to the  
18 laws of another state or that requires any litigation, arbitration or other  
19 dispute resolution proceeding arising from the contract to be conducted in  
20 another state is against this state's public policy and is void and  
21 unenforceable.

22 3. The state board of education shall adopt rules for the procurement  
23 of goods and information services by school districts and charter schools  
24 using electronic, online bidding. The rules adopted by the state board shall  
25 include the use of reverse auctions and shall be consistent with the  
26 procurement practices prescribed in title 41, chapter 23, article 13,  
27 modifying as necessary those provisions and the rules adopted pursuant to  
28 that article that the state board determines are not appropriate for school  
29 districts and charter schools. Until the rules are adopted, school districts  
30 and charter schools may procure goods and information services pursuant to  
31 title 41, chapter 23, article 13 using the rules adopted by the department of  
32 administration in implementing that article.

33 4. The auditor general shall review the proposed rules to determine  
34 whether the rules are consistent with the procurement practices prescribed in  
35 title 41, chapter 23 and any modifications are required to adapt the  
36 procedures for school districts.

37 5. If the auditor general approves the proposed rules, the auditor  
38 general shall notify the state board in writing and the state board shall  
39 adopt such rules.

40 6. If the auditor general objects to the proposed rules, the auditor  
41 general shall notify the state board of the objections in writing and the  
42 state board, in adopting the rules, shall conform the proposed rules to meet  
43 the objections of the auditor general or revise the proposed rules to which  
44 an objection has been made and submit the revisions to the auditor general  
45 for approval.

1           B. After the bids submitted in response to an invitation for bids are  
2 opened and the award is made or after the proposals or qualifications are  
3 submitted in response to a request for proposals or a request for  
4 qualifications and the award is made, the governing board shall make  
5 available for public inspection all information, all bids, proposals and  
6 qualifications submitted and all findings and other information considered in  
7 determining whose bid conforms to the invitation for bids and will be the  
8 most advantageous with respect to price, conformity to the specifications and  
9 other factors or whose proposal or qualifications are to be selected for the  
10 award. The invitation for bids, request for proposals or request for  
11 qualifications shall include a notice that all information and bids,  
12 proposals and qualifications submitted will be made available for public  
13 inspection. The rules adopted by the state board shall prohibit the use in  
14 connection with procurement of specifications in any way proprietary to one  
15 supplier unless the specification includes all of the following:

16           1. A statement of the reasons why no other specification is  
17 practicable.

18           2. A description of the essential characteristics of the specified  
19 product.

20           3. A statement specifically permitting an acceptable alternative  
21 product to be supplied.

22           C. No project or purchase may be divided or sequenced into separate  
23 projects or purchases in order to avoid the limits prescribed by the state  
24 board under subsection A of this section.

25           D. A contract for the procurement of construction or construction  
26 services shall include a provision that provides for negotiations between the  
27 school district and the contractor for the recovery of damages related to  
28 expenses incurred by the contractor for a delay for which the school district  
29 is responsible, which is unreasonable under the circumstances and which was  
30 not within the contemplation of the parties to the contract. This subsection  
31 shall not be construed to void any provision in the contract that requires  
32 notice of delays, provides for arbitration or other procedure for settlement  
33 or provides for liquidated damages.

34           E. [EXCEPT AS PROVIDED IN SECTION 15-213.03](#), the auditor general may  
35 conduct discretionary reviews, investigations and audits of the financial and  
36 operational procurement activities of school districts, nonexempt charter  
37 schools and school purchasing cooperatives. The auditor general has final  
38 review and approval authority over all school district, nonexempt charter  
39 school and school purchasing cooperative audit contracts and any audit  
40 reports issued in accordance with this section.

41           F. [EXCEPT AS PROVIDED IN SECTION 15-213.03](#), in addition to the  
42 requirements of sections 15-914 and 15-914.01, school districts, nonexempt  
43 charter schools and school purchasing cooperatives, in connection with any  
44 audit conducted by a certified public accountant, shall contract for a  
45 systematic review of purchasing practices using methodology consistent with

1 sampling guidelines established by the auditor general. The auditor general  
2 shall consider cost when establishing guidelines pursuant to this subsection  
3 and to the extent possible shall attempt to minimize the cost of the  
4 review. The purpose of the review is to determine whether the school  
5 district, nonexempt charter school or school purchasing cooperative is in  
6 compliance with the procurement laws and applicable procurement rules of this  
7 state. A copy of the review shall be submitted on completion to the auditor  
8 general. The auditor general may conduct discretionary reviews of school  
9 districts, nonexempt charter schools and school purchasing cooperatives not  
10 required to contract for independent audits.

11 G. The attorney general or county attorney has jurisdiction to enforce  
12 this section. The attorney general or county attorney may seek relief for  
13 any violation of this section through an appropriate civil or criminal action  
14 in superior court, including an action to enjoin a threatened or pending  
15 violation of this section and including an action to enforce compliance with  
16 any request for documents made by the auditor general pursuant to this  
17 section.

18 H. The department of education shall enact policies and procedures for  
19 the acceptance and disposition of complaints from the public regarding school  
20 procurement practices and shall forward all school procurement complaints to  
21 the attorney general. Notwithstanding rules adopted by the state board,  
22 school districts shall not be required to prepare or submit an annual report  
23 on the benefits associated with the use of construction-manager-at-risk,  
24 design-build, qualified select bidders list and job-order-contracting  
25 methods.

26 I. The state board of education shall adopt, and the auditor general  
27 shall review, rules authorizing school districts to procure construction  
28 services by construction-manager-at-risk, design-build, qualified select  
29 bidders list and job-order-contracting methods of project delivery. The  
30 rules shall not require school districts to obtain bid security for the  
31 construction-manager-at-risk method of project delivery.

32 J. A school district or charter school may evaluate United States  
33 general services administration contracts for materials and services. The  
34 governing board or governing body may authorize purchases under a current  
35 contract for materials or services without complying with the requirements of  
36 the procurement rules adopted by the state board of education if the  
37 governing board or governing body determines in writing that all of the  
38 following apply:

39 1. The price for materials or services is equal to or less than the  
40 contractor's current federal supply contract price with the general services  
41 administration.

42 2. The contractor has indicated in writing that the contractor is  
43 willing to extend the current federal supply contract pricing, terms and  
44 conditions to the school district or charter school.

1           3. The purchase order adequately identifies the federal supply  
2 contract on which the order is based.

3           4. The purchase contract is cost effective and is in the best  
4 interests of the school district or charter school.

5           K. Unless otherwise provided by law, contracts for materials or  
6 services and contracts for job-order-contracting construction services may be  
7 entered into if the duration of the contract and the conditions of renewal or  
8 extension, if any, are included in the invitation for bids or the request for  
9 proposals and if monies are available for the first fiscal period at the time  
10 the contract is executed. The duration of contracts for materials or  
11 services and contracts for job-order-contracting construction services shall  
12 be limited to no more than five years unless the governing board determines  
13 in writing that a contract of longer duration would be advantageous to the  
14 school district. Payment and performance obligations for succeeding fiscal  
15 periods are subject to the availability and appropriation of monies.

16           L. For the purposes of this section:

17           1. "Nonexempt charter school" means a charter school that is not  
18 exempted from procurement laws pursuant to section 15-183, subsection E,  
19 paragraph 6.

20           2. "School purchasing cooperative" means an entity engaged in  
21 cooperative purchasing as defined in section 41-2631.

22           3. "Total cost" means the cost of all materials and services,  
23 including the cost of labor performed by employees of the school district,  
24 for all construction as provided in subsection A of this section.

25           Sec. 2. Title 15, chapter 2, article 1, Arizona Revised Statutes, is  
26 amended by adding section 15-213.03, to read:

27           15-213.03. Exemptions and exceptions from audit and  
28 investigatory requirements

29           TO THE EXTENT PERMITTED BY THE SINGLE AUDIT ACT AMENDMENTS OF 1996  
30 (P.L. 104-156; 110 STAT. 1396; 31 UNITED STATES CODE SECTIONS 7501 THROUGH  
31 7507) AND ANY OTHER FEDERAL LAW, UNLESS THE AUDITOR GENERAL, THE STATE BOARD  
32 OF EDUCATION OR THE DEPARTMENT OF EDUCATION MAKES OR RECEIVES AN ALLEGATION  
33 OF GROSS NEGLIGENCE OR CRIMINAL CONDUCT:

34           1. A SCHOOL, SCHOOL DISTRICT OR CHARTER SCHOOL THAT IS ASSIGNED A  
35 LETTER GRADE OF A PURSUANT TO SECTION 15-241 IS EXEMPT FROM THE AUDIT AND  
36 INVESTIGATORY REQUIREMENTS PRESCRIBED IN THIS TITLE.

37           2. A SCHOOL, SCHOOL DISTRICT OR CHARTER SCHOOL THAT IS ASSIGNED A  
38 LETTER GRADE OF B PURSUANT TO SECTION 15-241 IS EXEMPT FROM THE ANNUAL AUDIT  
39 REQUIREMENTS PRESCRIBED IN THIS TITLE AND THOSE AUDITS SHALL BE CONDUCTED NO  
40 MORE FREQUENTLY THAN ONCE EVERY TWO YEARS FOR THAT SCHOOL, SCHOOL DISTRICT OR  
41 CHARTER SCHOOL.

42           Sec. 3. Section 15-914, Arizona Revised Statutes, is amended to read:

43           15-914. Financial and compliance audits

44           A. EXCEPT AS PROVIDED IN SECTION 15-213.03, the governing board of a  
45 school district that is required to comply with the single audit act

1 amendments of 1996 (P.L. 104-156; 110 Stat. 1396; 31 United States Code  
2 sections 7501 through 7507) shall contract for at least annual financial and  
3 compliance audits of financial transactions and accounts subject to the  
4 single audit act amendments of 1996 and kept by or for the school district.  
5 The governing board of a school district that is not required to comply with  
6 the single audit act and that has adopted an expenditure budget of two  
7 million dollars or more for the maintenance and operation fund pursuant to  
8 section 15-905 shall contract for an annual financial statement audit. The  
9 governing board of a school district that is not required to comply with the  
10 single audit act and that has adopted an expenditure budget of less than two  
11 million dollars but more than seven hundred thousand dollars for the  
12 maintenance and operation fund pursuant to section 15-905 shall contract for  
13 a biennial financial statement audit. An independent certified public  
14 accountant shall conduct the audit in accordance with generally accepted  
15 governmental auditing standards. To the extent permitted by federal law, a  
16 school district that is required to participate in an annual audit pursuant  
17 to this subsection may convert to a biennial audit schedule if the previous  
18 annual audit did not contain any significant negative findings. If a  
19 biennial audit of a school district conducted pursuant to this subsection  
20 contains any significant negative findings, the school district shall convert  
21 back to an annual audit schedule. If a school district is required to  
22 convert back to an annual audit schedule pursuant to this subsection because  
23 of significant negative findings, the school district may subsequently  
24 convert to a biennial audit schedule if the previous two annual audits did  
25 not contain any significant negative findings. For the purposes of this  
26 subsection, "significant negative finding" means a finding that results in  
27 the issuance of a letter of noncompliance from the auditor general.

28 B. EXCEPT AS PROVIDED IN SECTION 15-213.03, the governing board of a  
29 charter school that is required to comply with the single audit act  
30 amendments of 1996 shall contract for an annual financial and compliance  
31 audit of financial transactions and accounts subject to the single audit act  
32 amendments of 1996 and kept by or for the charter school. A charter school  
33 shall contract with a different auditor at least once every six years.

34 C. EXCEPT AS PROVIDED IN SECTION 15-213.03, a charter school that is  
35 not subject to the single audit act amendments of 1996 shall contract for at  
36 least an annual financial statement audit conducted in accordance with  
37 generally accepted governmental auditing standards. An independent certified  
38 public accountant shall conduct the audit. A charter school shall contract  
39 with a different auditor at least once every six years.

40 D. For all audits referred to in subsections A, B and C of this  
41 section, the independent certified public accountant shall submit a uniform  
42 system of financial records compliance questionnaire to the auditor general  
43 with the applicable audit reports.

44 E. Contracts for all financial and compliance audits and financial  
45 statement audits and the completed audits shall be approved by the auditor

1 general as provided in section 41-1279.21. Contracts for all financial and  
2 compliance audits and financial statement audits shall comply with the rules  
3 for competitive sealed proposals as prescribed by the state board of  
4 education in section 15-213.

5 F. If the school district or charter school will incur costs of  
6 financial and compliance audits for the budget year, the governing board of a  
7 school district or the governing body of the charter school may increase its  
8 base support level for the budget year by an amount equal to the amount  
9 expended for the district's or charter school's financial and compliance  
10 audits in the year before the current year, increased by the growth rate as  
11 prescribed by law, subject to appropriation. In determining the amount  
12 expended for the district's or charter school's financial and compliance  
13 audits, the school district or charter school shall include only the portion  
14 of the audit that must be paid from monies other than federal monies. The  
15 department of education and the auditor general shall prescribe a method for  
16 determining the increase in the base support level and shall include in the  
17 maintenance and operation section of the budget format, as provided in  
18 section 15-903, a separate line for financial and compliance audits  
19 expenditures.

20 G. Every audit contract shall include a systematic review of average  
21 daily membership, as defined in section 15-901, using methodology that is  
22 consistent with guidelines established by the auditor general. The auditor  
23 general shall consider cost when establishing guidelines pursuant to this  
24 subsection and, to the extent possible, shall attempt to minimize the cost of  
25 the review. The purpose of the review is to determine whether the average  
26 daily membership reported by the charter school or school district is in  
27 compliance with the laws of this state and the uniform systems of financial  
28 records for charter schools and school districts.

29 Sec. 4. Section 15-914.01, Arizona Revised Statutes, is amended to  
30 read:

31 15-914.01. Accounting responsibility: definition

32 A. School districts may apply to the state board of education to  
33 assume accounting responsibility.

34 B. A school district applying to the state board of education to  
35 assume accounting responsibility shall develop and file with the department  
36 of education an accounting responsibility plan and document in the plan:

37 1. Administrative and internal accounting controls designed to achieve  
38 compliance with the uniform system of financial records and the objectives of  
39 this section, including:

40 (a) Procedures for approving, preparing and signing vouchers and  
41 warrants.

42 (b) Procedures to ensure verification of administrators' and teachers'  
43 certification records with the department of education for all classroom and  
44 administrative personnel required to hold a certificate by the state board of

1 education pursuant to section 15-203 before issuing warrants for their  
2 services.

3 (c) Procedures to account for all revenues, including allocation of  
4 certain revenues to funds.

5 (d) Procedures for reconciling the accounting records monthly to the  
6 county treasurer.

7 2. A compilation of resources required to implement accounting  
8 responsibility, including, at a minimum, personnel, training and equipment,  
9 and a comprehensive analysis of the budgetary implications of accounting  
10 responsibility for the school district and the county treasurer.

11 C. Prior to January 1 of the fiscal year preceding the fiscal year of  
12 implementation and before submitting an application to assume accounting  
13 responsibility, a school district shall apply for evaluation by the auditor  
14 general. On completion of the evaluation the auditor general may recommend  
15 approval or denial of accounting responsibility to the state board of  
16 education. The evaluation by the auditor general shall be performed  
17 contingent on staff availability and may be billed to the school district at  
18 cost. Evaluation at a minimum shall include the following:

19 1. The most recent financial statements audited by an independent  
20 certified public accountant.

21 2. The most recent report on internal control, report on compliance  
22 and uniform system of financial records compliance questionnaire prepared by  
23 an independent certified public accountant or procedural review completed by  
24 the auditor general.

25 3. The working papers of the independent certified public accountant  
26 responsible for auditing the school district, if deemed appropriate by the  
27 auditor general.

28 4. A procedural review if deemed appropriate by the auditor general.

29 D. **EXCEPT AS PROVIDED IN SECTION 15-213.03**, school districts that are  
30 approved by the state board of education to assume accounting responsibility  
31 shall contract with an independent certified public accountant for an annual  
32 financial and compliance audit. The auditor general may reevaluate the  
33 school district annually based on the audit to determine compliance with the  
34 uniform system of financial records. If permitted by federal law, a school  
35 district may convert to a biennial audit schedule if the previous annual  
36 audit conducted pursuant to this subsection did not contain any significant  
37 negative findings. If a biennial audit of a school district conducted  
38 pursuant to this subsection contains any significant negative findings, the  
39 school district shall convert back to an annual audit schedule. If a school  
40 district is required to convert back to an annual audit schedule pursuant to  
41 this subsection because of significant negative findings, the school district  
42 may subsequently convert to a biennial audit schedule if the previous two  
43 annual audits did not contain any significant negative findings. For the  
44 purposes of this subsection, "significant negative finding" means a finding

1 that results in the issuance of a letter of noncompliance from the auditor  
2 general.

3 E. To assume accounting responsibility a school district shall notify  
4 the county treasurer and the county school superintendent of its intention  
5 before March 1 of the fiscal year preceding the fiscal year of  
6 implementation. On notification, the county treasurer shall establish  
7 acceptable standards for interface by school districts with the county  
8 treasurer, including specifications for computer hardware and software  
9 compatibility and procedures to ensure the capacity of each school district  
10 for reconciliation of accounts with those of the county treasurer.

11 F. Any school district that fails to maintain accounting standards as  
12 provided by the uniform system of financial records and that is found to be  
13 in noncompliance with the uniform system of financial records by the state  
14 board of education as provided in section 15-272 is not eligible to  
15 participate in the program provided by this section.

16 G. Any school district that has assumed accounting responsibility  
17 pursuant to this section, that fails to maintain accounting standards as  
18 provided by the uniform system of financial records and that is found to be  
19 in noncompliance with the uniform system of financial records by the state  
20 board of education as provided in section 15-272 is no longer eligible to  
21 participate in the program provided by this section.

22 H. For the purposes of this section, "accounting responsibility" means  
23 authority for a school district to operate with full independence from the  
24 county school superintendent with respect to revenues and expenditures,  
25 including allocating revenues, monitoring vouchers, authorizing and issuing  
26 warrants and maintaining and verifying staff records for certification and  
27 payroll purposes.